

FILED
MAY - 6 2009
Clerk, U.S. District and
Bankruptcy Courts

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)
501 School Street, S.W., Suite 500)
Washington, DC 20024,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF DEFENSE,)
1600 Defense Pentagon)
Washington, DC 20301-1600,)
)
Defendant.)
_____)

Civil Action No.

Case: 1:09-cv-00836
Assigned To : Sullivan, Emmet G.
Assign. Date : 5/6/2009
Description: FOIA/Privacy Act

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff, Judicial Watch, Inc., brings this action against Defendant U.S. Department of Defense ("DOD") to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff is a non-profit, educational foundation organized under the laws of the District of Columbia and having its principal place of business at 501 School Street, S.W., Suite 500, Washington, DC 20024. Plaintiff seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of law. In furtherance of its public interest

mission, Plaintiff regularly serves FOIA requests on federal, state, and local government agencies, entities, and offices, and disseminates its findings to the public.

4. Defendant is an agency of the United States Government and is headquartered at 1600 Defense Pentagon, Washington, DC 20301-1600. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On September 10, 2008, Plaintiff sent a FOIA request to HQ U.S. European Command (“USEC”), a component of Defendant, seeking access to the following records:

- a. Records (including PowerPoint presentations and briefings provided) concerning trips Senator John McCain made to Georgia (October 5, 2003; August 28, 2006; and any other dates between 2003 and present).
- b. Records concerning Cindy McCain’s visit to Georgia with the UN World Food Program (August 25-27, 2008) and any PowerPoint presentations and briefings provided.
- c. Records concerning Senators Joe Lieberman and Lindsay O. Graham’s “fact finding” trip to Georgia and PowerPoint presentations and briefings provided for the Senators (departed the United States on August 19, 2008).
- d. Records concerning Senator Joseph Biden’s trip to Georgia and PowerPoint presentations and briefings provided for the Senator (around August 16, 2008).

6. Defendant acknowledged receipt of Plaintiff’s FOIA request by e-mail sent September 26, 2008. Defendant’s September 26, 2008 e-mail assigned the request No. 08-FOIA-29. However, Defendant’s letter did not include any responsive documents or state with specificity when Plaintiff could expect to receive a substantive response.

7. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(B)(i), Defendant was required to respond to Plaintiff’s September 10, 2008 FOIA request within thirty (30)

working days or by October 23, 2008.

8. Because Plaintiff had not received a substantive response to its FOIA request, on January 13, 2009, Plaintiff sent an e-mail to Defendant seeking an update as to the status of the request. On February 11, 2009, Defendant responded by e-mail stating that Defendant had found approximately 50 documents responsive to Plaintiff's request and estimated that it would be at least a month before Plaintiff could expect to receive a substantive response.

9. As of May 5, 2009, however, Plaintiff has not received a substantive response to its September 10, 2008 FOIA request.

10. Because Defendant USEC failed to comply with the time limits set forth in 5 U.S.C. § 552(a)(6)(A) and 5 U.S.C. § 552(a)(6)(B), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its September 10, 2008 FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1

(Violation of FOIA)

11. Plaintiff realleges paragraphs 1 through 10 as if fully stated herein.

12. Defendant has violated FOIA by failing to produce any and all non-exempt records responsive to Plaintiff's September 10, 2008 request within the time limits required by 5 U.S.C. § 552(a)(6)(A) and 5 U.S.C. § 552(a)(6)(B).

13. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's

failure to comply with FOIA to be unlawful; (2) order Defendant to search for and produce any and all non-exempt records responsive to Plaintiff's September 10, 2008 request and a *Vaughn* index of allegedly exempt records responsive to the request by a date certain; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the request; (4) grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

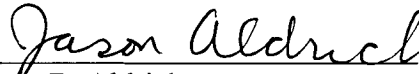
Dated: May 5, 2009

Respectfully submitted,

JUDICIAL WATCH, INC.



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